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CHARGES AGAINST LEBBEUS R. WILFLEY, JUDGE OF THE UNITED STATES COURT FOR CHINA, AND PETITION FOR HIS REMOVAL FROM OFFICE.

To the President:

I return herewith the paper submitted to you by Lorrin Andrews under date of November 19, 1907, entitled "Charges against Lebbeus R. Wilfley, Judge of the United States Court for China, and Petition for his Removal from Office," together with my opinion thereon pursuant to section 2 of Article II of the Constitution.

A copy of the charges was sent to Judge Wilfley for such explanation or remark as he had to make, but before the paper could reach China he had left for the United States and did not receive any copy of the charges until he reached Washington on or after the 13th of January. On the 30th of January Judge Wilfley handed me a memorandum regarding the charges, a copy of which I transmit herewith.

On the 20th of February, after examining the copies of the records and official reports relevant to the subject, I notified Mr. Andrews that I would consider any further statements or proofs which he wished to submit and would hear any oral statements that he wished to make, on a specified day. He replied, through the Honorable George E. Waldo, that he would be otherwise engaged on that day, without, however, asking that another time be set. Nevertheless, I did set another day and gave Mr. Andrews notice through Mr. Waldo that I would hear him then, and received a reply that Mr. Andrews' papers were before a committee of the House of Representatives—still without asking for any different time for the hearing. I assume, therefore, that no further hearing is desired, and that the matter is to be disposed of by you upon the papers already presented, and the official records.

Stripped of the epithets and expressions of feeling and opinion on the part of the petitioner and immaterial statements which do not enter into the substance, the charges are as follows:

First. That the Judge prevented six American lawyers in Shanghai from practicing in the United States Court for China by means of requiring them to pass an examination as a condition of admission to the bar of the court.

It appears by the charge and by the official records that at the opening of the court a rule was promulgated providing for an examination for admission to the bar. It further appears by the records that during the first year of the court there were fifteen applicants for examination, of whom nine passed and six failed to pass. It also appears that the petitioner, Mr. Andrews, was one of those who failed on his original examination, but that he was allowed a second opportunity, upon which he passed and was admitted to the bar.

I have no doubt of the lawful authority of the Judge to establish such a rule. It is one of the inherent powers of courts of justice to determine the way in which the qualifications for membership of the bar practicing before them shall be ascertained. The United States Court for China was created by the act of Congress of June 30, 1906, as a court of record, with general original jurisdiction and extensive appellate jurisdiction, and there is nothing in the statute to justify the conclusion that this customary power was withheld. The rule adopted was the same as the rule which is actually in force in a number of American States. For example, members of the State and Federal bars in New York and Pennsylvania can not be admitted to the bar of New Jersey without passing an examination. The same is true of Kentucky, North Carolina, Rhode Island, Louisiana, and Kansas.

I am not prepared to say that the conditions which led to the establishment of the new court for China, and with which it had to deal at the outset, were not such as to make it for the interest of justice to establish the rule followed in the States I have mentioned rather than some other rule. The Judge, who was there and knew the conditions, who was charged by law with the responsibility of inaugurating and conducting the court, and upon whom was imposed the duty of determining that question, was probably best qualified to determine. Congress can change the rule by legislation, but the President has no authority to review it. Even if you had power to review the decision of the court as to what would be the best rule for that court, and if you were to differ in opinion from the court, it would be idle to talk about punishing the Judge because of that difference of opinion.

The second charge is, in substance, that the Judge permitted the District Attorney to practice in the court without passing the examination,

It would certainly have been very extraordinary if the Judge had refused to permit the District Attorney to practice. That officer had been appointed by the President, by and with the advice and consent of the Senate, pursuant to the statute creating the court, to represent the United States in trying and arguing causes in that court.

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It appears that during the first few months, when lawyers were few, the District Attorney also appeared in private cases. During the latter part of the year his public business seems to have taken up his entire time. I suppose there are few district attorneys in the United States who do not also practice in private cases. There is no legal objection to it and no other objection, unless there is interference with the public business. The only exceptions are probably to be found in the large cities, where the public business engrosses the entire time of the district attorneys.

The third charge is that said Wilfley has by spoken and written words and by his actions libeled and defamed the petitioner and the other members of the American bar who failed to pass the examination and charged them with being disreputable practitioners, and has secured the publication of articles in the public press to the same effect.

This clearly is not a charge of official misconduct and it is no part of the onerous duties of the President to try libel suits against his appointees. Were it your duty to take cognizance of such charges there is not here any charge to which anyone can be called on to answer in any form. Without a statement of the articles charged to have been written or printed, so that it may be seen whether they were libelous, and so that the person charged may say whether he is responsible for them, and, if responsible, whether he maintains their truth, such a general charge as this is mere aspersion, upon which no action can properly be taken.

The fourth charge is that Judge Wilfley has commenced proceedings to disbar the petitioner upon a charge of perjury in an affidavit filed in the United States Court of Appeals of the Ninth Circuit, and that before bringing such proceedings the Judge had threatened to bring them in case this petitioner did not dissolve his partnership with one Brooks.

Obviously, the question whether this proceeding ought to have been brought is to be determined in the proceeding itself. The petitioner can not be disbarred for perjury without proof of the perjury and a record of the proceeding against him, and upon that proof and record he will be entitled under the statute to the judgment of the Circuit Court of the United States for the Ninth Circuit. The proper answer to such a charge is certainly not by an attempt to remove the Judge who directs the proceeding. Judge Wilfley informs me that it is not true that the proceeding was preceded by any threat, but whether it was or not there would seem to be no offense involved in telling the person charged that it was going to be brought, and the Judge might well have considered and stated that under circumstances looking toward reformation and good conduct he should refrain from bringing it.

The fifth charge is that the Judge misused and abused the powers of the court in three specified proceedings:

(1) That he ordered an American named Winklebach to appear before the British Court for China in a proceeding pending in that court.

It appears that Winklebach was a necessary party in a case in which the British court had jurisdiction because the other defendants were British subjects. As the various national courts having the same territorial jurisdiction in China can issue process only to their own nationals, it has been common to issue such orders as a matter of comity in aid of the proceeding in the other court. If Winklebach considered that the order was without authority, he could have moved to vacate it and could have appealed. He did neither.

(2) That in the case of M. J. Connell & Co. against Daly, a receiver was appointed of the defendant's business as a restaurant keeper without granting an adjournment, for which the defendant applied.

(3) That in the case of Friede *v.* Getz Brothers & Co. the court refused an adjournment which ought to have been granted and proceeded with the case in the absence of the plaintiff.

Both of these cases are simply cases of the exercise of judicial discretion, clearly within the power of the court and as to which the parties had the right of review by appeal. Neither of the parties seems to have asked for such a review. The action certainly can not be reviewed in this way.

The sixth charge is that the Judge refused to accept bail from the American named Price, convicted of an assault with a deadly weapon, and after conviction and pending appeal.

The Judge was quite right in refusing bail unless he considered that there was probable cause based upon doubt as to the correctness of the judgment. The new court exercises the jurisdiction formerly exercised by the United Minister to China, and as to that jurisdiction section 4095, United States Revised Statutes, expressly provides that an appeal to the Circuit Court of the Ninth Circuit "shall not operate as a stay of proceedings unless the Minister certifies that there is probable cause to grant the same, when the stay shall be such as the interests of justice may require." The refusal to grant the bail after conviction was in strict accordance both with the letter and the spirit of the law. Whether the judge was mistaken or not in thinking that there was no probable cause can not be determined without a critical examination of the record, but if he was mistaken on that subject that is no ground for removal. The petitioner is mistaken in supposing that bail could be allowed after conviction as

a matter of course. It is not so very long since there was no appeal at all from a criminal conviction in the courts of the United States. An appeal is now allowed, and properly so, but it is not yet the law that a conviction means nothing and it ought not to be the law. This is especially true under the conditions existing in China.

The seventh charge is that the Judge permitted the prosecuting attorney, Mr. Bassett, to act as interpreter of the defendant's testimony in a case against one Torres, a Filipino.

There is no charge of any misinterpretation of the testimony, or of any error or injustice in the trial. The Judge himself had long lived in the Philippines and understands Spanish quite well; the defendant was represented by counsel who asked for no regular interpreter and made no objection and apparently was quite satisfied to have the assistance of the District Attorney in helping the Judge to understand his client. Neither the defendant nor his counsel is now complaining. The charge seems to be fine drawn and without substance.

Shortly before the presentation of these charges, Mr. Bassett, the United States Attorney, had mailed a report in the ordinary course of his duty, dated November 11, 1907, which has since been received at the Department of State. This report contains an official statement of the facts regarding a large part of the matters referred to in the charges, and I transmit it herewith.

There is a broader view to be taken of this petition as a whole and of the proceedings of the United States Court for China, from which the petitioner has picked out certan details for criticism.

There was a reason for the creation of the court, and an urgent reason, in the existence of conditions in Shanghai, and, to a less degree, in other treaty ports of China, discreditable to the United States and humiliating to American self-respect. The foreign settlement of Shanghai is itself a considerable city, with many thousands of inhabitants from all the Western nations. In it there is no single tribunal which has jurisdiction for the administration of justice over all its inhabitants. The citizens of each nation are subject to the jurisdiction only of the judicial officers of their own nation, and are exempt from interference from the judicial officers of any other nation. As a result of this peculiar arrangement the vice which seems to thrive in the atmosphere of the Orient has long tended to seek shelter under the flag of the country whose administration is the most lax and ineffective. American administration in Shanghai had long been notoriously lax and ineffective, and the gamblers and prostitutes of Shanghai generally flourished under the claim of American citizenship and the protection of American indifference. To such an extent had this gone that prostitutes generally in Shang-

hai, and, to a considerable extent in the other cities, whether American or not, were called American girls and the two expressions were practically synonymous. One of the principal causes urging to the formation of the new court was the necessity of doing away with this disgraceful condition of affairs. The evidence is overwhelming that Judge Wilfley has accomplished this work effectively and thoroughly and has cleared the American name from the disgrace that rested upon it. It was not an easy task, and it could not be done except by the stern and active administration of justice. Such an administration necessarily creates resentment and enmity. The lawyers whose most liberal clients have been the gamblers and prostitutes of Shanghai never complained of the old order of things, but they are now full of bitterness against the Judge, who has driven their clients out of business, but the decent and virtuous Americans in Shanghai were indignant and humiliated over the former conditions, and are now grateful and approving. The situation is clearly and temperately stated in a letter dated September 25, 1907, from Mr. W. W. Lockwood, associate secretary of the Young Men's Christian Association of Shanghai, to the Honorable Charles E. Watson, of Indiana, which was sent to me by Mr. Watson.

Mr. Lockwood says:

> Judge Wilfley faced a very difficult condition of affairs when he established the new court a year ago. Things had been allowed to run loose for so long that there were those who believed that nothing could be done in the way of restraint. But the court was not of this opinion. A further difficulty was that no body of law had been laid down for the guidance of the court, thus rendering the work of the court most difficult and taxing, but an examination of the careful decisions of the court will speak for itself. An even greater witness to the efficient work of this tribunal is the improved condition of affairs as far as Americans are concerned all over China. The Judge's work has been in the face of the determined opposition of the forces of evil in Shanghai and other places where the court sits on circuit. He, however, has the unanimous support of those who want to see the law enforced honestly and without partiality. The newspapers, both British and American, that speak for the community have been unanimous in their expression of approval of the court's work.

Rev. James L. Barton, corresponding secretary of the American Board for Foreign Missions, wrote to me from Boston, under date of September 18, 1907, saying:

> I have just returned to the office after having spent something like six months in China. * * *
>
> I wish also to express my great appreciation of the work of Judge Wilfley. I was in Shanghai, Tientsin, and Hankow, and saw with my own eyes how his work was saving the good name of America. The representatives of other powers spoke to me in high terms of what the Judge is doing, declaring that if that work continues they would have to do something of the kind to protect their good names from the stain cast upon them by profligates who claim citizenship for the protection it gives.

I find on the files of the Department a letter sent to you by Messrs. Underwood & Underwood. It had been received by them from Mr. Edward H. Foot, manager of their eastern department. He says:

You have very likely noticed the establishment at Shanghai of an American Court for China.

As to the need: The reception that I had at Shanghai when I came here before the establishment of the court last year to open our branch office was of this sort: "An American, are you? Well; the Americans furnish us our saloonkeepers and gamblers and run our houses of prostitution. What are you going into here?" This was particularly the attitude of the Chinese, and with others it was assumed that my business was probably something disreputable. Reference to a woman as an American was a distinct reflection on her character.

As to the result: I returned to Shanghai in July of this year and have been here for several months. The attitude of the city toward Americans, and as I have felt it, has not merely changed; it is *strikingly different*. In no instance this year have I encountered the sneering reception of a year ago. So extended has been the cleaning up or cleaning out of the tough element, considerable of which, driven from Manila, landed here, that American citizenship in Shanghai is to-day almost a certificate of respectability.

Naturally, Judge Wilfley, who organized this court, has had to meet all sorts of misrepresentation and bitter opposition from the elements whose business and methods he has opposed.

I find also a letter written to you June 11, 1907, by Daniel L. Rader, the editor of the Pacific Christian Advocate, of Portland, Oreg. He says:

Before Judge Wilfley's appearance in China, the word "American girl" was a stench and an offense to such an extent that no self-respecting American woman would allow herself to be called an "American girl."

The influence of those who claim to be American lawyers was of the most degrading quality. I am sure I speak advisedly when I say that these men were the greatest hindrance to the promotion of decency and virtue that the American missionaries, both men and women, encountered in the Empire. Judge Wilfley and Attorney Bassett found these conditions prevailing, and which were far worse than anything I can describe, when they arrived in Shanghai.

* * * * * * *

Both Attorney Bassett and Judge Wilfley have gone about their work with a quiet dignity and an honest purpose which have brought honor to the United States Government and credit to our people. I am sure I am speaking within bounds when I say that nothing which has occurred in China in the past twenty-five years has had so wholesome an effect as the stand taken by the officers of the United States District Court for the district of China.

Many other similar letters have come to the Department, and there has also been received a memorial communicated to you by a committee appointed at a public meeting of Americans in Shanghai

and bearing the signatures of several hundreds of American residents, among whom I recognize many familiar and most highly respectable names. The memorial says:

We, the undersigned, American citizens residing in China, desire to put on record our emphatic approval of the course pursued by Judge L. R. Wilfley in the United States Court for China.

He has already done much to drive out of China worthless and vicious characters, and to close up disorderly houses. His court is proving a terror to evil-doers, and his high standard of justice is raising American prestige in China.

We urge upon Congress the necessity of providing a suitable code of laws for the guidance of the United States Court in China, the present lack of which is a serious handicap to the court.

The official reports to the Department are to the same effect. Mr. Ragsdale, the consul-general at Tientsin, reports:

Now that we have a United States Court for China the matter has been taken up vigorously by the prosecuting attorney, and, if not interfered with, the cause of our shame will soon be a thing of the past. Nearly all of the undesirables have either left or will leave very shortly. The gamblers have either closed their places or have sold out, and all the so-called "American houses" have been closed or passed into the possession of other nationalities.

In this connection I feel it my duty to express my appreciation of the new court. Whatever may have been the criticisms, the court should have the sympathy and support of the Department. The situation demanded such action as the court has taken. In no other way could the long-standing and deep-rooted disgrace be abolished.

Mr. Rodgers, until last summer the consul-general at Shanghai, reports:

I have the honor to report in connection with the arrest and prosecution by the United States Court for China of the keepers of American bawdy houses in Shanghai that six have pleaded guilty and been fined $1,000 Mexican. * * * The American inmates of these houses have left or are going, and although some may return or stay, it is well known that the day of the "American girl" as a prostitute in Shanghai is ended. * * *

The prosecution of the American prostitutes has been received in Shanghai with varied sentiment, as was natural to expect. A certain class, which was quite agreeable to allowing America to assume and continue such a burden of odium, is vehement in denunciation, but on the other hand the respectable classes agree that the action of the court is entirely right.

I beg to state, in this connection, that no such successful outcome could have been reached without the authority and process of the United States Court for China.

Mr. Charles Denby, who succeeded Mr. Rodgers as consul-general at Shanghai, reports under date of September 13, 1907:

It is the determination of the American attorneys in this city who have been affected by the Judge's rulings, and some of whom have a deep animosity against the Judge on account of action by him against them some years ago in Manila, to

make every possible effort to overthrow the court. I wish, however, to confirm the opinion which has been expressed by every reputable American interest in China that the conduct of Judge Wilfley is worthy of the highest praise.

Secretary Taft, upon his own personal inquiry during his recent visit to China, expressed his opinion in a public speech at Shanghai, which he confirmed in a letter to the Secretary of State. He said:

> Our Government was fortunate in the selection as the first judge of that court of a gentleman who had given four years' experience in the Orient as attorney-general of the Philippines, and who came to Shanghai with an intimate knowledge of the method of uniting, in one administration, the principles of the common law of the United States with the traditions and conditions of a foreign country. His policy in raising high the standard of admission to the bar and in promoting vigorous prosecutions of American violators of law, and the consequent elimination from this community of undesirable characters who have brought disgrace upon the name of Americans in the cities of China, can not but commend itself to everyone interested in the good name of the United States among the Chinese people and with our brethren of other countries who live in China. It involves no small amount of courage and a great deal of common sense to deal with evils of this character and to rid the community of them. Interests which have fattened on abuses can not be readily disturbed without making a fight for their lives, and one who undertakes the work of cleansing and purifying must expect to meet resistance in libel and slander and the stirring up of official opposition based on misinformation and evil report. I am glad to think that the Circuit Court for China has passed through its trial and that the satisfaction which its policy has brought to the American and foreign communities in China and to the Chinese people will not be unknown to the Administration at Washington, at whose instance this court was first established.

All of these evidences have been confirmed by numerous conversations with Americans returning from China who sought the State Department to express their satisfaction over the good work that has been done in Shanghai.

The circumstances thus presented exhibit a motive for the attempt to drive Judge Wilfley from his position. They present a strong probability of misjudgment, exaggeration, and distortion of facts on the part of the lawyers who have personally suffered from the changed conditions. They make it clear that upon no trifling grounds should our Government incur the public misfortune which would be involved in putting the stamp of disapproval on the work for decency and righteousness that the United States Court for China has done.

My opinion is that Judge Wilfley is entitled, not to condemnation but to commendation and high credit for his conduct in office, and that the charges against him should be dismissed.

Respectfully submitted.

ELIHU ROOT.

DEPARTMENT OF STATE,
Washington, February 29, 1908.

THE WHITE HOUSE,
Washington, March 2, 1908.

SIR: I have received and read your report of February 29 upon the charges submitted by Lorrin Andrews under date of November 19, 1907, against Judge Wilfley; it appearing from your report that Congressman Waldo stands sponsor for these charges. I cordially concur in your finding, which is to the effect that Judge Wilfley is not only innocent but is attacked solely because of the fearlessness and integrity with which he has stamped out vice and crime in Shanghai.

I inclose you a letter from Robert E. Lewis, secretary of the International Committee of the Young Men's Christian Association, who has just returned from Shanghai, China, where he has resided for ten years as foreign secretary of that body. This letter is in line with the quotations contained in your report, and the statements therein made in reference to the character and conduct of Judge Wilfley and his accusers are borne out by the statements of every reputable man, whether business man, missionary, Government agent, or representative of a philanthropic or religious body, who has written to me. It is clear that Judge Wilfley has been attacked not because he has done evil, but because he has done good. The assault on him is simply an impeachment of decency and zeal for the public good, and if successful would tend to cow and discourage every honest public servant who dares to withstand the forces banded together for evil, and would do grave damage to the honor and interest of our country in the Orient. If the attack were to succeed, the beneficiaries would be every keeper of a house of prostitution, every swindling lawyer, every man who lives by blackmail and corruption, in the cities of the Far East. These are the people whose hopes have been revived by the effort to overthrow this upright and fearless judge, who has already done so much for the good fame of America in China. It is not too much to say that this assault on Judge Wilfley, in the interest of the vicious and criminal classes, is a public scandal.

I cordially approve your conclusions.

Sincerely yours,

THEODORE ROOSEVELT

HON. ELIHU ROOT,
Secretary of State.

[Inclosure.]

INTERNATIONAL COMMITTEE
OF YOUNG MEN'S CHRISTIAN ASSOCIATIONS.

ROBERT E. LEWIS,
SECRETARY FOR SHANGHAI.

NEW YORK CITY,
3 West 29th Street, February 27, 1908.

MR. PRESIDENT: I have heard with astonishment that an attempt is being made to impeach Judge L. R. Wilfley of the United States Court for China.

I have just returned from Shanghai, China, where I resided for ten years as the foreign secretary of the International Committee of Young Men's Christian Associations.

I am thoroughly familiar with the conditions which confronted the United States Court, the methods adopted by Judge Wilfley, and the results obtained.

The vicious element among the American residents had been for so long uncurbed that they were a serious menace not only to our prestige but to our trade. As a result of the vigorous methods pursued by Judge Wilfley and the officers of the United States Court, the treaty ports of China have been largely rid of these bad elements, and no others dare to come in.

The Judge is an honest, able, and fearless officer of the law, and has inaugurated a new era for Americans in China. He has the support of all Americans in China, except those who are defeated litigants and those who want the old régime of unpunished crime to continue.

I do not hesitate to say that it is outrageous that a fearless and incorruptible judge should be, in the prosecution of his duties, thus harried by persons who have largely felt the strong hand of the law upon them; and still more outrageous that even a single member of Congress should lend himself to the support of such unwarranted proceedings.

I trust I may express the hope that after satisfying yourself of the correctness of these facts you will, Mr. President, give our Court in China the benefit of your powerful support.

Very respectfully, your obedient servant,

ROBERT E. LEWIS,
Secretary of the International Committee.

THE PRESIDENT,
The White House.